house to avoid the necessity of killing in self-defense. There have been prior decisions to the same effect. *Askew* v. *State*, 94 Ala. 4, 10 So. 657; *Bean* v. *State*, 25 Tex. Cr. App. 346, 8 S. W. 278. Even in its unextended form the doctrine merits scrutiny. It is a heritage from times of turbulence and strife when retreat from one's castle was necessarily attended with an increase of peril. See Seymour D. Thompson, "Homicide in Self-defense," 14 AM. L. REV. 548, 554. Its justification rested on that fact. *Semayne's Case*, 3 Coke, 185, 186; *State* v. *Patterson*, 45 Vt. 308. See 1 HALE P. C. 481; Joseph H. Beale, "Homicide in Self-defense," 3 COL. L. REV. 526, 541. That a retreat from one's house to-day increases peril is not axiomatic. It depends in each case upon the facts and a blanket rule is impossible. Accordingly, a blanket rule of law that looks for justification to an assumption that retreat from a dwelling is always attended with increased peril is unsound. Doubtless the complex of sentiment and inadequate analysis in which the rule that "an Englishman's house is his castle" is embedded will preserve it. But even that affords no justification for its extension.

INTERSTATE COMMERCE — TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — TAXATION OF BILLS RECEIVABLE DERIVED FROM INTERSTATE COMMERCE. — A Louisiana statute provides for the taxation of all property having a *situs* in the state, including credits and bills receivable. (1898 LA. ACTS, Act. 170, § 7). The plaintiff is a domestic corporation engaged in buying and selling lumber both within and without the state. An assessment was made upon it by subtracting from the total sum due the company for interstate and intrastate business, the total owed by the company in Louisiana and other states. The plaintiff appeals from judgment rejecting its demand to annul the assessment. *Held*, that the judgment be affirmed. *Krauss Bros. Lumber Co.* v. *Board of Assessors*, 88 So. 397 (La.).

The extent to which a state may indirectly burden interstate commerce and yet not regulate commerce in the constitutional sense, is a practical, not a technical question. See *Galveston, H. & S. A. Ry. Co.* v. *Texas*, 210 U. S. 217, 225. A state may tax property, within its boundaries, engaged in interstate commerce, on the basis of its value as a going concern. *W. U. Tel. Co.* v. *Massachusetts*, 125 U. S. 530. A tax on property in the original packages brought from without the state is valid. *Brown* v. *Houston*, 114 U. S. 622. Also, a tax on net income of a domestic corporation, partly derived from interstate commerce, is constitutional. *U. S. Glue Co.* v. *Town of Oak Creek*, 247 U. S. 321. Such taxes, practically, have very little deterrent effect on interstate commerce. On the other hand, to tax gross receipts derived from interstate commerce burdens each transaction in a manner that tends to prohibition. *Phila. & So. S. S. Co.* v. *Pennsylvania*, 122 U. S. 326; *Galveston, H. & S. A. Ry. Co.* v. *Texas*, *supra*. No such effect as that would follow the tax in the principal case. Like the net income tax, it bears no ratio to the interstate business done, and has no tendency, practically, to embarrass it. See *U. S. Glue Co.* v. *Town of Oak Creek*, *supra*, at 328. See Thomas R. Powell, "Indirect Encroachment on Federal Authority by the Taxing Powers of the States," 32 HARV. L. REV. 374, 415. The tax is a legitimate exercise of the state's power to exact indiscriminately a toll from all property within its jurisdiction.

JOINT TENANCY — SEVERANCE — EFFECT OF NON-ACCEPTANCE OF DEED BEFORE DEATH OF GRANTOR. — A joint tenant executed a deed of his moiety and delivered it to a third party, to be kept until the grantor's death and then given to the grantee. After the grantor's death, the deed was handed to the grantee, who till then had known nothing of it. The other joint tenant claims

the whole property by right of survivorship. *Held*, that he is entitled to the entire property. *Green* v. *Skinner*, 197 Pac. 60 (Cal.).

On sound principles, the deed here, duly executed and delivered to the depositary, should at once vest a future interest in the grantee. Aside from the question of acceptance, a majority of American jurisdictions so hold. *Bury* v. *Young*, 98 Cal. 446, 33 Pac. 338; *Brown* v. *Westerfield*, 47 Neb. 399, 66 N. W. 439. *Contra*, *Stonehill* v. *Hastings*, 202 N. Y. 115, 94 N. E. 1068. See Harry A. Bigelow, "Conditional Deliveries of Deeds of Land," 26 HARV. L. REV. 565, 576. This would sever the joint tenancy. See *Clerk* v. *Clerk*, 2 Vern. Ch. 323. See LITT., § 292. Many courts, however, hold that a grantor's power to clothe the grantee with ownership is not effectively exercised until acceptance by the grantee. *Hibberd* v. *Smith*, 67 Cal. 547, 8 Pac. 46; *Meigs* v. *Dexter*, 172 Mass. 217, 52 N. E. 75. If so, then here the survivor stepped in at the grantor's death. See Co. LITT., 185 b. *Cf. Bassler* v. *Rewodlinski*, 130 Wis. 26, 109 N. W. 1032. But whether the grantee should be given the advantages of ownership before acceptance, as is sometimes done by these same courts under the fiction of relation back, must depend not upon logic but upon a balance of the interests involved. See *Baker* v. *Snavely*, 84 Kan. 179, 183, 114 Pac. 370, 372. The courts rightly refuse to apply the fiction to cut off the intervening rights of a *bona fide* purchaser. *Waldock* v. *Frisco Lumber Co.*, 176 Pac. 218 (Okla.); *Jackson* v. *Rowland*, 6 Wend. (N. Y.) 666. But they adopt it when the dispute is between the grantee and an heir or widow of the grantor. *Wells* v. *Wells*, 132 Wis. 73, 111 N. W. 1111; *Smiley* v. *Smiley*, 114 Ind. 258, 16 N. E. 585; *Stephens* v. *Rinehart*, 72 Pa. St. 434. Clearly, no social policy exists to place the right of survivorship higher than the claims of an heir or the right of dower.

JUDGMENTS — OPERATION AS AGAINST THIRD PARTIES.— A "granted" an oil and gas lease to B for six years. A then conveyed the land to the defendant. Later, A started suit against B to annul the lease. The court, not aware that A had conveyed all his interest, dismissed the suit, and, on a counterclaim, extended B's lease a reasonable time to compensate for the interruption to his quiet enjoyment (*Leonard* v. *Busch-Everett Co.*, 139 La. 1099, 72 So. 749). The six-year term having expired, the defendant leased to the plaintiff, who paid some money down; but being warned off the land by B and learning of the decree extending B's lease, the plaintiff refused to go on with his lease, and sued to recover the money paid. From a judgment for the plaintiff the defendant appeals. *Held*, that the appeal be dismissed. *Standard Oil Co. of La.* v. *Webb*, 88 So. 808 (La.).

Where a lease purports to "grant," there is an implied covenant for quiet enjoyment. *Headley* v. *Hoopengarner*, 60 W. Va. 626, 55 S. E. 744. See *Stott* v. *Rutherford*, 92 U. S. 107, 109. See 1 TIFFANY, LANDLORD AND TENANT, § 79 a; RAWLE, COVENANTS FOR TITLE, 5 ed., §§ 272, 273. This has been held to apply to so-called oil and gas leases. *Knotts* v. *McGregor*, 47 W. Va. 566, 35 S. E. 899. See THORNTON, OIL AND GAS, 3 ed., §§ 98, 891. It has likewise been held that an action by the lessor against the lessee to recover possession is a breach of the implied covenant. *Levitzky* v. *Canning*, 33 Cal. 299. *Cf. Hubble* v. *Cole*, 88 Va. 236, 13 S. E. 441. But see *Callahan* v. *Goldman*, 216 Mass. 238, 103 N. E. 689. See 1 TIFFANY, LANDLORD AND TENANT, § 79 d (1); RAWLE, COVENANTS FOR TITLE, 5 ed., § 128. Since an oil and gas lease is specifically enforceable, equity might well under proper circumstances extend the term of the lease to compensate for the interruption. But the situation in *Leonard* v. *Busch-Everett Co.*, *supra*, was not a proper one for such relief. The true owner, the defendant in the principal case, was not joined; the decree was therefore not binding on him. *Dull* v. *Blackman*, 169 U. S. 243; *Gypsy Oil Co.* v. *Cover*, 78 Okla. 158, 189 Pac. 540. Further-